Filed 12/8/09 Marriott International v. Prolink CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MARRIOTT INTERNATIONAL, INC. et al.,

Plaintiffs and Respondents,

v.

PROLINK, INC.,

Defendant and Appellant.

E046504

(Super.Ct.No. INC043687)

OPINION

APPEAL from the Superior Court of Riverside County. Gary B. Tranbarger, Judge. Affirmed.

Lewis Brisbois Bisgaard & Smith, Jeffry A. Miller and Matthew B. Stucky for Defendant and Appellant.

Carlson & Messer, Charles R. Messer and Joseph R. Zamora for Plaintiffs and Respondents.

Between June 12 and 14, 2001, defendant Prolink, Inc. (Prolink) installed new global positioning system (GPS) units in golf carts belonging to plaintiff Marriott

International, Inc. (Marriott). The units were powered by the golf carts' batteries. On June 15, 2001, the carts, along with the cart barn in which they were parked and recharged overnight, were totally destroyed in a fire.

According to Prolink's expert witness, the cause of the fire could not be determined. According to Marriott's expert witnesses, on the other hand, the fire was electrical in origin; it was caused by wiring with nicked or otherwise compromised insulation; it started roughly where a golf cart known to have a malfunctioning GPS unit had been parked; it most likely started in the battery compartment of a golf cart; and it did not start in any of the other wiring or equipment in the cart barn. None of Marriott's experts, however, took the further step of opining that it was more likely than not that Prolink caused the fire.

In this action, a jury found that Prolink negligently caused the fire and awarded over $900,000 in damages. Prolink appeals, arguing that there was insufficient evidence that it actually caused the fire. We disagree. We will hold that, from the evidence, and particularly from the testimony of the expert witnesses, lay jurors could reasonably infer that a Prolink installer did, in fact, cause the fire. Hence, we will affirm.

I

FACTUAL BACKGROUND

Marriott operates the Shadow Ridge Golf Club in Palm Desert. As of June 2001, the club had 80 electric golf carts. The carts were only about six months old. Every night, they were parked in a cart barn, and their batteries were recharged.

Electricity entered the cart barn through two circuit breaker panels on the exterior of the northwest side of the building. It then went, via wiring in overhead conduits and channels, to the battery chargers. Each charger had a cord that could be plugged into the front of the battery compartment of a cart. The batteries were located under the cart seats.

According to Bryan Newman, a cart attendant, the circuit breakers in the cart barn would trip from time to time. However, Sydney Skosana, another cart attendant, did not recall them tripping. The cart barn had no other known electrical problems.

Each cart was equipped with a GPS unit, manufactured by Prolink. The GPS units gave golfers information about the course; at the same time, they enabled Marriott to track the carts.

On June 12-14, 2001, Prolink installers removed the old Prolink II units from Marriott's carts and put in new Prolink III units. The GPS unit was permanently attached to the cart canopy. Thus, the installers had to replace the canopy, then connect the GPS unit to the cart's battery via a power cord. Several of the Prolink installers were temporary workers, hired through an agency; they were young, between 17 and 20 years old.

On June 15, 2001, both Skosana and Newman noticed that the new GPS unit in at least one of the carts would not turn off. However, according to Newman, the same thing had happened with the old units "on numerous occasions." Around 8:30 p.m., Newman turned off all the lights in the cart barn and closed and locked it. He did not notice anything unusual.

Around 8:40 or 8:50 p.m., Lawrence Cuneo, Marriott's loss prevention officer, was at the other end of the property when he noticed a cloud over the cart barn. It took him three or four minutes to drive closer and to realize that the cart barn was on fire. At that point, it was already "totally engulfed." At 9:02 p.m., Cuneo called 911. Firefighters arrived at 9:08 p.m. By 11:00 p.m., the fire was out. However, the cart barn and all of the golf carts were destroyed.

Captain Ted Hart, a firefighter with the state Department of Forestry, responded to the fire and later examined the fire scene. He concluded that the fire was electrical. Although he could not identify a specific point of origin, he concluded that the area of origin was near the middle of the north side of the cart barn.

In Captain Hart's opinion, there were two possible causes of the fire. He thought it was most likely that a single battery charger had malfunctioned, causing an arc or spark. Alternatively, however, using 80 battery chargers at once could have overloaded the circuit breakers. He testified that there was "a large amount of damage" to the inside of the circuit breaker panels, but none to the outside. All but one or two of the circuit breakers had tripped.

Captain Hart testified that golf cart fires were not unusual in the Coachella Valley. They usually occurred while the batteries were being charged, and they were usually due to malfunctions in the charging equipment. The initial fuel source was typically either the plastic insulation on the wiring or hydrogen gas, which the batteries gave off as they were

charged. When hydrogen was the fuel source, the point of ignition was most likely to be inside the battery compartment.

Anthony La Palio, Marriott's "cause and origin" expert, also examined the fire scene. He agreed that the fire was electrical. He testified that, when an electric golf cart catches fire, the most likely point of ignition is inside the battery compartment. Moreover, he agreed that, although the point of origin could not be determined, the area of origin was the northwest area of the cart barn. According to Skosana, the cart attendant, he had parked the cart with the malfunctioning GPS unit in precisely this area. Skosana identified it to La Palio as cart No. 8.

La Palio conceded that there were extension cords in the cart barn, including some that ran under the tires of carts. He concluded, however, that based on the lack of fire damage around them, the extension cords could not have been the cause of the fire.

Dr. Gerald Zaminski was La Palio's employer and Marriott's expert on fire investigation. He, too, had examined the fire scene. He, too, agreed that the fire was electrical. He further agreed that an electrical golf cart fire was most likely to start in the battery compartment. In his opinion, the fire started in the area where carts No. 8 and 9 had been parked.

Dr. Zaminski did not agree that the circuit breaker panels could have caused the fire: "They showed heat damage to the back side. There was some [of what] looked like electrical activity inside one of them. But it's my opinion it was from being hit with . . . heat from the fire and not the cause of the fire." He was also able to rule out the overhead

wiring, the plugs, and the extension cords. He could not rule out the battery chargers or a malfunction in a cart's electrical system or battery.

Dr. Zaminski also testified that, in his experience, when a product caused a fire, in "a significant percentage of the cases . . . somebody had just come out and . . . fixed something[,] . . . and the closer that work is to the fire, the more significant that may be." "[W]e see that happen more often than where a product just came from the factory bad. It's pretty rare to have a product just have something really wrong with it from the factory. If it does, it usually fails pretty quickly." He conceded, however, that "all it tells us is that you have to be alert to the possibility that the repairs or modifications had something to do with it. So we then go and . . . look for physical evidence to support it." He was "unable to determine the cause of this fire based on the physical evidence[.]"

Dr. Robert Armstrong, Marriott's expert on electrical fires, agreed that the fire was electrical. He testified that an electrical fire necessarily is caused by "a compromise in insulation[.]" He also testified that, when an electric golf cart catches fire, the most likely point of origin is the battery compartment, "[b]ecause that's where all the heat producing items are." In this case, he found no evidence that the circuit breaker panels, the battery chargers, the plugs, or the extension cords had caused the fire. He agreed that there was fire damage to the circuit breaker panels, but he testified that it was mostly "on the side facing the [cart barn] . . . ."

Dr. Armstrong testified that "[i]t's more common for an electrical item to fail after it's recently installed than it is after years of service . . . . [¶] . . . If it's going to fail, it's

going to fail . . . when the current is first put on it. If it lasts for[] 2 years, 5 years, 7 years, chances are there really wasn't that much wrong to begin with." It would take about seven to 10 years before insulation would start to deteriorate and cause failures.

Dr. Armstrong also testified that, in determining the cause of an electrical fire, it is "important to understand" whether electrical work has been done recently, because "anytime anything is added or altered, modified, something new is installed, there is always a possibility that there could have been a mistake made or a faulty piece of equipment or some insulation got nicked or cut."

Prolink's own installation manual warned that damage to the power cable could cause the GPS to malfunction and shorts to occur. It further warned that shorts could cause a fire. Dr. Armstrong explained that the improper installation of a GPS unit could cause a fire because "there's going to be some vibration. If the cables are . . . allowed to move around within the compartment, they could conceivably get into a pinch point and get pinched. That can compromise the insulation. They can be lying against some rough edge or something that with the vibration can wear through the insulation and damage it." He admitted that he was stating only "what could go wrong," not necessarily what "did go wrong[.]" When asked whether compromised insulation could have made a GPS unit not turn off, he answered, "All I can say is that it's possible."

According to Prolink's expert on electrical fires, Douglas Bennett, it was "almost impossible" for a Prolink GPS unit to start a fire, because it had no battery. Moreover, in his opinion, it was impossible to determine the cause of the fire; there was insufficient

evidence that the fire was even electrical. He further testified, based on the lack of evidence of arcing on the wires above carts No. 8 and 9, that the fire started somewhere between the circuit breaker panels and those particular carts.

Every Prolink GPS unit went through a "burn-in test," in which it was run for three days straight, before it was shipped. As far as Prolink knew, none of its GPS units had ever started a fire.

Once a week, on Thursdays, a maintenance service under contract to Marriott carried out preventive maintenance on the carts; this could include checking the batteries.

II

PROCEDURAL BACKGROUND

Marriott[1] filed this action in 2004. By the time the case went to the jury, in 2008, it was asserting a single cause of action, for negligence, against a single defendant, Prolink.

The jury returned a special verdict, finding unanimously that (1) Prolink's employees were negligent; (2) the negligence of Prolink's employees caused harm to Marriott; and (3) Marriott's damages as a result of the negligence of Prolink's employees totaled $910,674.

---

[1] Actually, there were two plaintiffs — Marriott and Factory Mutual Insurance Company (Factory). Factory was Marriott's fire insurer; it had reimbursed Marriott for some of its losses and thus had become partially subrogated to Marriott's rights. Because Factory's interests were wholly derivative of and aligned with Marriott's, we do not distinguish between them in the remainder of this opinion.

Prolink filed a motion for judgment notwithstanding the verdict (JNOV) and a motion for new trial. In both motions, it argued that there was insufficient evidence that it caused the fire. The trial court denied the motions.

III

THE SUFFICIENCY OF THE EVIDENCE THAT PROLINK CAUSED THE FIRE

Prolink contends that there is insufficient evidence that it caused the fire. As a subsidiary contention, it argues that, under the circumstances of this case, expert testimony was required to establish causation and that none of the expert witnesses testified that it was more likely than not that Prolink caused the fire.

"'On the issue of the fact of causation, as on other issues essential to the cause of action for negligence, the plaintiff, in general, has the burden of proof. The plaintiff must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result. A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant.' [Citation.]" (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205.) However, "the plaintiff need not prove causation with absolute certainty. Rather, the plaintiff need only '"introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result."' [Citation.]" (*Viner v. Sweet* (2003) 30 Cal.4th 1232, 1243.)

"'Where findings of fact are challenged on a civil appeal, we are bound by the "elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted," to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor . . . .' [Citation.]" (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053.) "'Th[is] substantial evidence standard of review . . . applies to the jury's findings on the issue of causation . . . .' [Citation.]" (*Whiteley v. Philip Morris Inc.* (2004) 117 Cal.App.4th 635, 695.)

"If the matter in issue is one within the knowledge of experts *only* and not within the common knowledge of laymen, it is necessary for the plaintiff to introduce expert opinion evidence in order to establish a prima facie case. [Citations.]" (*Miller v. Los Angeles County Flood Control Dist.* (1973) 8 Cal.3d 689, 702.) This rule, too, applies to causation: "[W]here . . . the complexity of the causation issue is beyond common experience, expert testimony is required to establish causation. [Citations.]" (*Stephen v. Ford Motor Co.* (2005) 134 Cal.App.4th 1363, 1373 [products liability].)

In this case, many aspects of the causation question demanded expert testimony. For example, expert testimony was necessary to show that the fire was in fact electrical and not the result of arson, a lightning strike, etc. It was also necessary to rule out other

electrical ignition sources, such as the circuit breaker panels, the overhead wiring, and the battery chargers. These were not matters of common knowledge.

However, there was ample expert testimony on these matters. Four experts all agreed that the fire was electrical. Armstrong, Zaminski, and La Palio all agreed that, whenever an electric golf cart catches fire, the most likely point of ignition is inside the battery compartment. Moreover, there was substantial (albeit disputed) expert testimony ruling out all of the other possible points of ignition — the circuit breaker panels, the overhead wiring, the battery chargers, the plugs, and the extension cords. Captain Hart testified that either plastic insulation or hydrogen gas could have served as a fuel source.

It is arguably common knowledge that an insulation breach can cause an arc or a spark and thus start a fire. In any event, there was also expert testimony to this effect. When Armstrong was asked, "[D]o you have an opinion about whether th[is] electrical fire was caused by a compromise in insulation?," he answered, "Well, given that it's an electrical fire, it would virtually have to be."

Indeed, Prolink does not really contend that there was insufficient evidence on these points. Rather, it contends that there was insufficient evidence that one of its installers caused the insulation breach in the battery compartment. Even as to this, however, there was at least some expert testimony. Zaminski testified that an electrical fire was more likely to be caused by a recent repair or modification than by a manufacturing defect. Armstrong similarly testified that an electrical item is most likely to cause a fire when it is either brand new or more than seven years old; he also testified

that recent electrical work can be the cause of a fire. This was, in substance, testimony that it was more likely that Prolink caused the insulation breach than that the insulation breach occurred due to either a manufacturing defect or ordinary wear and tear.

We recognize that not one expert actually testified that Prolink did cause an insulation breach which caused the fire. However, this particular link in the causation chain — as opposed to the broader question of causation in general — did not require expert testimony; it simply required a few inferences that even a lay juror could readily draw.[2]

First, it was reasonably inferable from the fact that Prolink had been working on the wiring in the battery compartments immediately before the fire. Prolink argues that "post hoc, ergo propter hoc" is a logical fallacy. "With respect to causation, '[m]ore than *post hoc, ergo propter hoc* must be demonstrated.' [Citations.]" (*Franklin v. Dynamic Details, Inc.* (2004) 116 Cal.App.4th 375, 394.) Here, however, there *was* more — there was evidence that other possible causes either were ruled out or were less likely.

Prolink points out that it did not have exclusive access to the battery compartments; an unnamed maintenance company serviced the golf carts every

---

[2] Marriott takes the position that, even when the "what," "when," "where" and "why" of the plaintiff's injury must be proven by expert testimony, the "who" need not. We do not necessarily agree with this facile and somewhat artificial formulation; however, we do agree with the more general proposition that there are cases, including this one, in which some but not all of the links in the chain of causation must be proven through expert testimony.

Thursday.[3] Even so, the evidence showed that Prolink actually worked on wiring in the battery compartment. By contrast, the maintenance company merely performed preventative maintenance. Its "inspection could or could not include on any given day or [in] any given week checking the batteries, water level in the batteries, things like that." Moreover, the batteries were only six months old and hence not likely to need any actual maintenance work. It is also significant that Prolink used some young and unskilled temporary workers. Even lay jurors could reasonably infer that the insulation breach was most likely caused by Prolink and not by the maintenance company.

Prolink also cites (1) Zaminski's testimony that, in investigating a fire caused by a product, he tries to find out whether the product has recently been repaired or modified, and (2) his further comment that " . . . I'm not saying this is more than 50 percent of the time because it's not. But a significant percentage of the cases we do are cases where somebody had just come out and had just . . . fixed something . . . ." Prolink argues that this contradicts a finding that it was more likely than not that it caused the fire. However, all Zaminski said was that, when a product causes a fire, less than 50 percent of the time somebody has just come out and fixed something. This does not mean that, when a product causes a fire *and* somebody has just come out and fixed something, less than 50

---

[3] June 14, 2001 — the last day that Prolink worked on the carts, and the day before the fire — was a Thursday. Although no evidence of this fact was introduced, counsel for Prolink made a representation to this effect in his opening statement. We therefore assume, without deciding, that this fact was properly before the jury.

percent of the time the "fix" caused the fire. Moreover, it does not address the situation we have here, in which numerous other potential causes have been ruled out.

The inference that Prolink caused the fire was further supported by the fact that the GPS unit in cart No. 8 would not turn off, and the fire started where cart No. 8 was parked. Prolink's own installation manual stated that damage to a cable could cause both a GPS malfunction and a fire. Moreover, Armstrong testified that it was "possible" that an insulation breach could have prevented the GPS unit in cart No. 8 from turning off. Admittedly, he did not say this was probable, much less that it was more likely than not. Even so, from this and all the other expert testimony, a lay juror could reasonably infer both that cart No. 8 had an insulation breach and that it caused the fire.

Prolink understandably notes that, at least according to Newman, one of the cart attendants the old GPS units also often refused to turn off. The jury, however, was not required to believe him. And even if it did, it was not required to conclude that the new unit's refusal to turn off was unrelated to the fire. We repeat that, under the applicable standard of review, we must resolve all evidentiary conflicts in favor of the judgment. Moreover, when two reasonable but conflicting inferences may be drawn, we must draw the one that supports the judgment.

Prolink similarly points out that its expert testified that leaving a GPS unit on would not increase the chance of fire, because "[i]t's designed to run continuously." This, however, was beside the point, which was whether a GPS unit *that could not be turned off* would indicate either compromised insulation or an increased chance of fire.

In any event, even assuming this testimony was germane, "[a]lthough a jury may not arbitrarily or unreasonably disregard the testimony of an expert, it is not bound by the expert's opinion. Instead, it must give to each opinion the weight which it finds that opinion deserves. So long as it does not do so arbitrarily, a jury may entirely reject the testimony of a plaintiff's expert, even where the defendant does not call any opposing expert and the expert testimony is not contradicted. [Citations.]" (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 633, fn. omitted.)

Finally, Prolink argues that the trial judge, in ruling on its motion for JNOV, found "no credible evidence" that the malfunctioning GPS unit in cart No. 8 had anything to do with the fire: "[T]here's not enough on that theory to get to a jury." We need not decide whether the evidence of this theory, standing alone, was sufficient to show that Prolink caused the fire, because it did not stand alone. We merely hold that it formed part of the substantial evidence of causation.

Prolink relies on *Bushling v. Fremont Medical Center* (2004) 117 Cal.App.4th 493. There, the plaintiff filed a medical malpractice action, alleging that immediately after a gall bladder operation, he began having pain in his left shoulder. (*Id*. at p. 497.) The defendants moved for summary judgment, submitting declarations to the effect that nothing had happened during the operation that could cause the shoulder injury and that such an injury could occur in the absence of any known cause. (*Id*. at pp. 498-501.) In opposition, the plaintiff filed two doctors' declarations, both stating that "'his injury . . . occurred more probably than not from either a traumatic injury such as dropping the

patient or from improper positioning of the patient or stretching of the extremity and but for the negligence of one of his care providers this injury would not have occurred.'" (*Id.* at pp. 503-504.)

The appellate court held that the doctors' declarations "were of no evidentiary value on the question of negligence or causation." (*Bushling v. Fremont Medical Center*, *supra*, 117 Cal.App.4th at p. 511.) "The difficulty that plaintiff encounters . . . is that there is no evidence that plaintiff was dropped, that he was improperly positioned, or that his arm was stretched during the procedure or recovery. The doctors assume the cause from the fact of the injury. [Their] opinions are nothing more than a statement that the injury could have been caused by defendants' negligence in one of the ways they specify. But, 'an expert's opinion that something *could* be true if certain assumed facts are true, without any foundation for concluding those assumed facts exist' [citation], has no evidentiary value. [Citation.]" (*Id.* at p. 510.) "And we note that plaintiff presented no evidence to suggest that an injury such as the one he suffered was rare or unusual in the absence of negligence." (*Id.* at p. 511.)[4]

---

[4] Justice Sims dissented, stating: "[W]e do not have to set aside our common sense so as to forget that the damage to plaintiff's shoulder first manifested itself on the morning following his abdominal surgery when plaintiff was in the hospital. Thus, . . . it may be the case that 'these things just happen' but the thing that happened to plaintiff just happened to happen when plaintiff was in the hospital for abdominal surgery. This is, of course, a wholly remarkable coincidence." (*Bushling v. Fremont Medical Center*, *supra*, 117 Cal.App.4th at p. 516 [dis. opn. of Sims, J.].)

Here, by contrast, there was substantial evidence disproving possible accidental or otherwise nonnegligent causes of the fire. Accordingly, unlike in *Bushing*, it was reasonable to "assume the cause," not *solely* from the fact of the injury, but also from the absence of other causes.

Marriott, on the other hand, relies on a case that we find to be more closely on point, *Hinckley v. La Mesa R.V. Center, Inc.* (1984) 158 Cal.App.3d 630. There, there was a fire in the engine compartment of the plaintiffs' motor home; a battery cable had been pinched against the frame, causing a short. (*Id*. at p. 634.) The defendants repaired the motor home. (*Id*. at p. 635; see also *id*., at p. 639, fn. 5.) About six months later, there was a second fire, again in the engine compartment. (*Id*. at pp. 635-636.) This time, the motor home was completely destroyed. (*Id*. at p. 636.) The plaintiffs' expert witness, Robert Blair, testified that the second fire was most likely an electrical fire; it might also have been due to leaking hydraulic fluid, but he discounted this possibility, because one of the plaintiffs had inspected the motor home the day before the fire. (*Id*. at pp. 637-638.) The trial court granted a nonsuit on all of the plaintiffs' causes of action, including a cause of action for negligence. (*Id*. at pp. 633-634.)

The appellate court reversed, holding (among other things) that there was sufficient evidence that "defendants' repair of the motor home was in fact negligent and a proximate cause of the [second] fire[.]" (*Hinckley v. La Mesa R.V. Center, Inc., supra*, 158 Cal.App.3d at p. 637.) It explained: "Expert Blair's testimony the cause of the fire was electrical in nature was sufficient evidence to support an inference that defendants

failed to use ordinary care in repairing the electrical wiring implicated in the fire. The fire started in the area where the wiring had been replaced in the course of defendants' repair. . . . [¶] . . . Blair's opinion of the electrical cause of the fire — coupled with defendants' recent repair of the instrumentalities thought to be the most likely ('strongest probability') source of the second fire — constitutes more than substantial evidence of defendants' negligence as the cause of the fire." (*Id*. at pp. 638-639, fns. omitted.)

Here, similarly, there was expert testimony that the fire was electrical. There was also evidence that it started in a battery compartment, on which Prolink had recently been working — not just in the last six months, as in *Hinckley*, but in the last day or so. The evidence here was also stronger than in *Hinckley*, because there was evidence that the fire here was specifically due to compromised insulation. Finally, like the expert in *Hinckley*, the experts here considered other possible causes of the fire but either ruled them out or concluded that they were unlikely.

Prolink argues that "the court's holding in *Hinckley* was based in part on a finding that the doctrine of res ipsa loquitur applied . . . ." Not so. The court began by holding that there was sufficient evidence of negligence. (*Hinckley v. La Mesa R.V. Center, Inc.*, *supra*, 158 Cal.App.3d at pp. 637-639.) It then went on to hold, separately and alternatively (see *id*. at p. 639 ["for this further reason"]), that there was *also* sufficient evidence of negligence under a res ipsa loquitur theory. (*Id*. at pp. 639-641.)

We therefore conclude that there was sufficient evidence to support the jury's finding that Prolink caused the fire.

IV

DISPOSITION

The judgment is affirmed. Marriott (including Factory; see fn. 1, *ante*, p. 8) is awarded costs on appeal against Prolink.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
Acting P.J.

We concur:

GAUT
J.

KING
J.